

Exhibit H

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DIANNE L. KELLEY and KENNETH)	
HANSEN,)	
)	
Plaintiffs,)	
)	
vs.)	No. C070475 MJP
)	
MICROSOFT CORPORATION, a)	
Washington corporation,)	
)	
Defendant.)	

VIDEOTAPED 30(b)(6) DEPOSITION UPON ORAL EXAMINATION OF
MICROSOFT CORPORATION
MARK CROFT
(CONTAINS CONFIDENTIAL TESTIMONY
SUBJECT TO PROTECTIVE ORDER)

11:01 A.M.
AUGUST 29, 2007
1001 FOURTH AVENUE, SUITE 4000
SEATTLE, WASHINGTON

REPORTED BY: JULIE R. HEAD, CRR, RPR, CCR No. 3119

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<p>11:02:38 1 Corporation for Microsoft Corporation.</p> <p>11:02:41 2 THE VIDEOGRAPHER: The court reporter today is</p> <p>11:02:43 3 Julie Head with the firm Yamaguchi, Obien & Mangio.</p> <p>11:02:46 4 Please swear in the witness and we may</p> <p>11:02:48 5 proceed.</p> <p>6 MARK CROFT,</p> <p>7 sworn as a witness by the Notary Public,</p> <p>8 testified as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. SMART:</p> <p>11:03:02 11 Q. Mr. Croft, my name is Will Smart. You and I</p> <p>11:03:04 12 have just been introduced, correct?</p> <p>11:03:06 13 A. Yes. Hello.</p> <p>11:03:06 14 Q. We have never met before, right?</p> <p>11:03:08 15 A. That's correct.</p> <p>11:03:08 16 Q. Okay. Would you state your full name and</p> <p>11:03:10 17 address for the record, please, sir?</p> <p>11:03:11 18 A. My name is Mark Andrew Croft. My residential</p> <p>11:03:16 19 address is 3048 137th Avenue Northeast, Bellevue,</p> <p>11:03:24 20 Washington State. Zip code is 98005.</p> <p>11:03:28 21 Q. How long have you resided there, sir?</p> <p>11:03:32 22 A. Just a shade under ten years.</p> <p>11:03:34 23 Q. Okay. And what is your employment, sir?</p> <p>11:03:36 24 A. My current employment is with Microsoft</p> <p>11:03:39 25 Corporation and I'm employed in the marketing function.</p>	<p>11:05:03 1 Q. Working on what project?</p> <p>11:05:04 2 A. That was -- The project was Windows 2000 and</p> <p>11:05:11 3 Windows XP.</p> <p>11:05:17 4 Q. And before that, sir?</p> <p>11:05:19 5 A. I was a product manager.</p> <p>11:05:21 6 Q. Which product?</p> <p>11:05:23 7 A. Windows 2000.</p> <p>11:05:26 8 Q. Can you give me a thumbnail sketch of your</p> <p>11:05:28 9 educational background, please?</p> <p>11:05:31 10 A. Yes. I have a first degree, a Bachelor of</p> <p>11:05:35 11 Science, in engineering and then a master's degree in</p> <p>11:05:41 12 services engineering. Both of those degrees were --</p> <p>11:05:46 13 originate from the UK university system.</p> <p>11:05:49 14 Q. And when did you get your master's, sir?</p> <p>11:05:51 15 A. I qualified for that in 1984.</p> <p>11:05:56 16 Q. And how old are you, sir?</p> <p>11:05:58 17 A. 46.</p> <p>11:06:04 18 Q. Who did you work for -- for before you came to</p> <p>11:06:06 19 work for Microsoft?</p> <p>11:06:09 20 A. Immediately before Microsoft, I was</p> <p>11:06:11 21 self-employed.</p> <p>11:06:16 22 Q. And then before that?</p> <p>11:06:17 23 A. I was employed by -- get my sequence right,</p> <p>11:06:23 24 here. I -- I was employed by Unisys Corporation -- I'm</p> <p>11:06:28 25 sorry, Ernst & Young.</p>
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<p>11:03:43 1 Q. What is your title?</p> <p>11:03:45 2 A. My title is director of marketing.</p> <p>11:03:48 3 Q. How long have you been the director of</p> <p>11:03:50 4 marketing for Microsoft?</p> <p>11:03:52 5 A. That title, now, just over two years.</p> <p>11:03:57 6 Q. And, so, give me an approximate start date for</p> <p>11:04:01 7 your becoming the director of marketing.</p> <p>11:04:06 8 A. Hum. That would have been June/July of 2005.</p> <p>11:04:16 9 Q. All right. And were you employed by Microsoft</p> <p>11:04:18 10 before that?</p> <p>11:04:18 11 A. I was.</p> <p>11:04:19 12 Q. In what capacity, sir?</p> <p>11:04:21 13 A. I was a group marketing manager.</p> <p>11:04:27 14 Q. For how long?</p> <p>11:04:29 15 A. That title would have been two to three years</p> <p>11:04:33 16 predating the director title.</p> <p>11:04:35 17 Q. And which group were you the marketing manager</p> <p>11:04:37 18 for?</p> <p>11:04:38 19 A. That -- That group marketing manager role was</p> <p>11:04:41 20 in a division of Microsoft known as the Windows</p> <p>11:04:45 21 Division.</p> <p>11:04:49 22 Q. And before you were the group marketing</p> <p>11:04:51 23 manager for the Windows Division, what position did you</p> <p>11:04:55 24 hold?</p> <p>11:04:56 25 A. I was a lead marketing manager.</p>	<p>11:06:30 1 Q. When you were self-employed, what job did you</p> <p>11:06:32 2 do?</p> <p>11:06:33 3 A. I was a freelance IT consultant.</p> <p>11:06:41 4 Q. Have you ever given a deposition before, sir?</p> <p>11:06:44 5 A. I have not.</p> <p>11:06:47 6 Q. Have you ever been designated as a 30(b)(6)</p> <p>11:06:52 7 designee before?</p> <p>11:06:52 8 A. Not that I'm aware.</p> <p>11:06:54 9 Q. Have you ever given sworn testimony in any</p> <p>11:06:56 10 context?</p> <p>11:06:57 11 A. No.</p> <p>11:06:59 12 Q. All right. Showing you Exhibit No. 1 to the</p> <p>11:07:02 13 depositions here today, sir. This is a notice of</p> <p>11:07:07 14 30(b)(6) deposition, and I presume you have seen that</p> <p>11:07:10 15 before; is that right?</p> <p>11:07:11 16 A. I have.</p> <p>11:07:12 17 Q. Okay. And it's my understanding that you have</p> <p>11:07:14 18 been designate -- designated by Microsoft to testify to</p> <p>11:07:18 19 category number eight, which is the nature and location</p> <p>11:07:21 20 of all -- all documents relating to any consumer</p> <p>11:07:24 21 research undertaken by or on behalf of Microsoft with</p> <p>11:07:27 22 respect to the Windows Vista Capable sticker program; is</p> <p>11:07:32 23 that right?</p> <p>11:07:32 24 A. Yes.</p> <p>11:07:33 25 Q. Okay. And are you going to testify on</p>

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<p>11:26:29 1 MR. CASPER: Objection: The question is 11:26:31 2 calling for speculation. 11:26:35 3 A. I'm not sure. 4 Q. (BY MR. SMART:) Did you look for any? 11:26:37 5 A. I did not. 11:26:38 6 Q. Why not? 11:26:40 7 A. The -- Much of this relates to work done 11:26:44 8 several years ago that -- you know, I do not have files 11:26:49 9 that go back that far, specific to e-mail. 11:26:55 10 Q. Did you look anywhere at Microsoft for any 11:26:58 11 such documents kept by anybody who participated in the 11:27:01 12 reviews in the meetings that you have identified? 11:27:04 13 A. No. I relied on the input from the two 11:27:08 14 people: Mr. Cook and Mr. Srinivasan. 11:27:11 15 Q. When you say you relied on the info, you 11:27:13 16 wouldn't have relied on them for any info regarding 11:27:17 17 e-mails, notes, or meeting minutes because you didn't 11:27:19 18 ask them about that, right? 11:27:21 19 A. I focused on -- on documents rather than 11:27:25 20 e-mail. 11:27:30 21 Q. You didn't ask Mr. Srinivasan or Mr. Cook for 11:27:32 22 any notes or meeting minutes that they kept, correct? 11:27:35 23 A. Correct. 11:27:36 24 Q. And you didn't ask them for any e-mails, 11:27:38 25 right?</p>	<p>11:28:48 1 mine was also involved, part time: Mr. Patrick Kennedy. 11:28:55 2 Q. Did you ask Mr. Kennedy what documents he 11:28:58 3 possessed? 11:28:59 4 A. I did not need to. 11:29:01 5 Q. And, therefore, did not do it, right? 11:29:04 6 A. Correct. 11:29:05 7 Q. What reports were made to senior management 11:29:08 8 about the Riley Rowe findings? 11:29:12 9 A. The -- The actual -- The final report itself 11:29:16 10 was our -- was our -- was our main document. 11:29:21 11 Q. What reports were made to senior management -- 11:29:23 12 whether they were main documents or not -- concerning 11:29:25 13 the Riley Rowe findings? 11:29:28 14 MR. CASPER: Object to the form of the 11:29:29 15 question as vague and ambiguous. 11:29:32 16 A. So, our -- 11:29:33 17 MR. CASPER: And it's around the term -- your 11:29:35 18 use of the term reports, whether you're referring to the 11:29:37 19 written reports or whether you're referring to oral 11:29:39 20 discussions in the meetings. 21 Q. (BY MR. SMART:) I want to know if there's any 22 document that makes any recommendation about the Riley 23 Rowe findings. 11:29:52 24 A. There is no other document, that I'm aware of, 11:29:54 25 beyond the Riley Rowe report itself.</p>
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<p>11:27:38 1 A. Correct. 11:27:38 2 Q. And you didn't ask them for any other kind of 11:27:41 3 documents that may have been kept by any of the 11:27:43 4 participants that participated in those reviews, 11:27:45 5 correct? 11:27:46 6 A. No. 11:27:46 7 MR. CASPER: Objection -- Objection: 11:27:47 8 Misstates the witness's testimony. 9 Q. (BY MR. SMART:) The answer was no? 11:27:53 10 A. Yes. 11:27:54 11 Q. Okay. 11:27:54 12 A. Me -- Meaning that I specifically consulted 11:27:57 13 with both of those colleagues on the nature of research 11:28:01 14 documents relative to this program. 11:28:04 15 Q. Yes. But I'm not talking about the research 11:28:05 16 documents themselves, now, sir. I'm talking about 11:28:07 17 e-mails, notes, meeting minutes, or other documents 11:28:11 18 generated by people who were in the reviews. Did you 11:28:13 19 ever ask anybody for those documents? 11:28:16 20 A. I did not. 11:28:16 21 Q. Do you know anybody at Microsoft who did? 11:28:18 22 A. I am not aware. 11:28:23 23 Q. Who else was involved in the review meetings? 11:28:38 24 A. During the period that I was active on this 11:28:40 25 project, Mr. Cook, Mr. Srinivasan. Another colleague of</p>	<p>11:29:57 1 Q. Did you ask anybody if there are any other 11:29:59 2 documents that exist beyond the Riley Rowe report? 11:30:02 3 A. I asked Mr. Cook and Mr. Srinivasan. 11:30:08 4 Q. Who made the final decision to incorporate the 11:30:11 5 Riley Rowe findings in any other Microsoft document? 11:30:16 6 A. I'm not aware. 11:30:17 7 Q. Who made the decision to go forward with the 11:30:22 8 Longhorn Ready program which now is the Vista Capable 11:30:27 9 program? 11:30:28 10 A. That program was supported by a variety of 11:30:32 11 Microsoft people. 11:30:34 12 Q. I appreciate that. I'm saying: Who made the 11:30:36 13 decision? 11:30:37 14 MR. CASPER: Objection: Lack of foundation; 11:30:38 15 you're beyond the scope of this witness's designation. 11:30:43 16 MR. SMART: No, we're not. 17 Q. (BY MR. SMART:) You may answer, sir. 11:30:46 18 A. I'd say over the period of the course of this 11:30:48 19 project, multiple people who were involved over -- 11:30:54 20 guiding the project. 11:30:54 21 Q. Who were they? 11:31:03 22 A. Mr. Cook and Mr. Srinivasan were critical 11:31:08 23 people on -- through -- through -- through much of the 11:31:12 24 time on this project, assisted by myself. 11:31:16 25 Q. Who were the senior managers who you had to</p>

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11:41:01 1 programs. Do I have that right?
 11:41:03 2 A. Yes.
 11:41:03 3 Q. Okay. How many reports were there and from
 11:41:10 4 whom relating to how the term Windows Vista Capable
 11:41:14 5 would be understood in other languages?
 11:41:18 6 A. I'm not aware of the exact number.
 11:41:19 7 Q. And who created the reports?
 11:41:22 8 A. Mr. Cook would have that information.
 11:41:24 9 Q. So, you do not?
 11:41:25 10 A. Correct.
 11:41:25 11 Q. Okay. And do you not -- You don't have any
 11:41:29 12 information that you can tell me as to who actually
 11:41:31 13 generated the reports, right?
 11:41:32 14 A. My -- Mr. Cook informed me that that work was
 11:41:35 15 undertaken through our worldwide localization teams.
 11:41:40 16 Q. And who make up the worldwide localization
 11:41:43 17 teams?
 11:41:43 18 A. I'm not aware.
 11:41:45 19 Q. And you didn't ask?
 11:41:46 20 A. Correct.
 11:41:47 21 Q. Did you go to any worldwide localization teams
 11:41:49 22 to determine what documents they might have about
 11:41:54 23 consumer research relating to the Windows Vista Capable
 11:41:57 24 program or its predecessor?
 11:41:59 25 A. No. I established its existence through

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11:42:01 1 Mr. Cook.
 11:42:07 2 Q. Mr. Cook told you that the other category of
 11:42:09 3 information that he had was research regarding other
 11:42:13 4 logo programs, correct?
 11:42:14 5 A. Yes.
 11:42:16 6 Q. Did any -- Do any of the other logo programs
 11:42:18 7 have consumer research that in any way bears on the
 11:42:23 8 Windows Vista Capable program?
 11:42:25 9 MR. CASPER: Objection to the form of the
 11:42:26 10 question; it's vague and ambiguous.
 11:42:32 11 A. Microsoft possesses research that generically
 11:42:36 12 applies to the nature of -- of logos and stickers.
 11:42:36 13 Q. (BY MR. SMART:) Okay. And tell me how many
 11:42:36 14 reports or documents Microsoft has in that regard.
 11:42:48 15 A. Oh, I'm not aware.
 11:42:50 16 Q. Okay. Did you ask?
 11:42:51 17 A. I established, through Mr. Cook, their
 11:42:53 18 existence.
 11:42:55 19 Q. Did you ask how many there were?
 11:42:56 20 A. I did not.
 11:42:57 21 Q. Did you ask what the names of the documents
 11:42:59 22 were?
 11:42:59 23 A. I did not.
 11:43:00 24 Q. Why not?
 11:43:00 25 A. As Mr. Cook was the expert on bringing to this

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11:43:04 1 project the -- the nature -- the findings of research.
 11:43:13 2 Q. Are you -- Are you finished with your answer?
 11:43:16 3 A. I am.
 11:43:19 4 Q. How was it determined, then, that you would be
 11:43:21 5 here to answer questions relating to the nature and
 11:43:26 6 location of all such documents rather than Mr. Cook?
 11:43:31 7 MR. CASPER: I'm going to object to the form
 11:43:32 8 of the question -- or I'm going to object to the
 11:43:34 9 question to the extent it calls for any information
 11:43:37 10 that's protected by the attorney-client privilege.
 11:43:37 11 Q. (BY MR. SMART:) And I'm not asking for that
 11:43:37 12 I'm just asking if Mr. Cook's the guy that knows about
 11:43:37 13 it, why are you here testifying today, sir?
 11:43:46 14 MR. CASPER: And I would -- I would caution
 11:43:47 15 you not to reveal any communications with Microsoft's
 11:43:50 16 lawyers in giving your answer to this question.
 11:43:53 17 A. Thank you.
 11:43:55 18 I was the manager responsible for the project
 11:43:58 19 during part of the period of this -- of this program.
 11:43:58 20 Q. (BY MR. SMART:) Have you completed your
 11:43:58 21 answer?
 11:44:05 22 A. Yes.
 11:44:09 23 Q. Who determined the level of effort that you
 11:44:13 24 would go to in order to discover the nature and location
 11:44:18 25 of all documents relating to any consumer research

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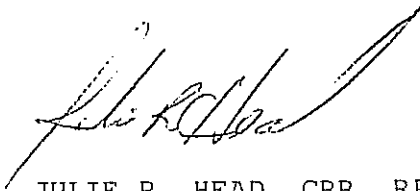
11:44:21 1 undertaken by or on behalf of Microsoft with respect to
 11:44:23 2 the Windows Vista Capable sticker programs?
 11:44:26 3 A. That was a team decision.
 11:44:28 4 Q. And who participated in the team?
 11:44:30 5 MR. CASPER: I would -- I would give you the
 11:44:31 6 same instructions: Be careful not to reveal any
 11:44:34 7 communications between you and Microsoft's lawyers that
 11:44:36 8 would be privileged.
 11:44:36 9 Q. (BY MR. SMART:) I'm not asking for the
 11:44:36 10 communications. I'm just asking who was on the team.
 11:44:41 11 A. The core team at this time -- or dur -- during
 11:44:46 12 part of this -- time of this program was Mr. Srinivasan.
 11:44:51 13 Q. No, sir. You misunderstand the question.
 11:44:53 14 A. Um-hum.
 11:44:53 15 Q. I'm asking: Who determined what efforts you
 11:44:57 16 would go through to locate the documents that are
 11:45:00 17 identified in category number eight?
 11:45:04 18 A. Oh, I'm -- I've relied on my own judgement.
 11:45:16 19 Q. Okay. Did you have any participation in
 11:45:31 20 drafting -- Well, let's do it this way: Take Exhibit
 11:45:36 21 Number 3, sir, if you would, please. It's a document
 11:45:39 22 containing -- it's a notebook containing documents that
 11:45:43 23 were produced by Microsoft. And turn, if you would,
 11:46:06 24 please, to the page that is Bates stamped number KELL,
 11:46:11 25 bunch of zeros, 087, called the OEM marketing bulletin.

REPORTER'S CERTIFICATE

I, JULIE R. HEAD, the undersigned Certified Court Reporter and Notary Public, do hereby certify:

That the sworn testimony and/or proceedings, a transcript of which is attached, was given before me at the time and place stated therein; that any and/or all witness(es) were by me duly sworn to testify to the truth; that the sworn testimony and/or proceedings were by me stenographically recorded and transcribed under my supervision, to the best of my ability; that the foregoing transcript contains a full, true, and accurate record of all the sworn testimony and/or proceedings given and occurring at the time and place stated in the transcript; that I am in no way related to any party to the matter, nor to any counsel, nor do I have any financial interest in the event of the case.

WITNESS MY HAND AND SEAL THIS 31st day of August, 2007.



JULIE R. HEAD, CRR, RPR
Certified Court Reporter
CCR No. 3119
Notary Public in and for the
State of Washington, residing in
Snohomish County. Commission
Expires 8-09-11.

